IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.238 OF 2006
A/w
Civil Application No.484 of 2006

Vasant Ganapati Vibhute and ors, .. Appellants. (Defendants)

Vs

Narayan Nagnath Vibhute, .. Respondent. (Plaintiff)

Mr G.S.Godbole, for the appellant.
Mr C.G.Patil for Mr S.S.Patwardhan, for the respondent.

CORAM : D.B.BHOSALE,J.
DATED : 06th JULY, 2007

P.C.:

1. This appeal by the appellant-defendants is directed against the judgment and order dated 26.6.2002 passed by the appellate court, allowing the appeal filed by the respondent-plaintiff partly and setting aside the judgment and order dated 2.11.2000 passed in R.C.Suit No.94 of 1992, by which the suit was dismissed by the trial Court. The suit was filed for perpetual injunction and possession based on partition between the plaintiff and defendants effected in 1975. The trial court dismissed the suit holding that the plaintiff failed to prove that there was a partition in the year 1975. Mr Godbole, learned counsel for the appellant, vehemently submitted that burden was on the plaintiff to prove the partition and he never shifted the same by adducing cogent evidence. Reliance on the mutation entry, to hold that there was partition, by

appeal court is erroneous. He further submitted that the property itself had not been identified and, therefore, the appeal court was wrong in granting injunction against the defendants. I perused the judgment of the appeal court and in particular paragraphs 8 to 10 thereof. It appears that there was partition in 1975 not only in respect of Gat no.52/1,in respect of which injunction is sought, but other properties also. After effecting partition, necessary revenue entries were also effected by the revenue authorities. The plaintiff had led oral evidence in support of the case set up by him. The appellate court has considered the evidence in proper perspective. The trial Court had erred in holding that the mutation entry and other revenue record was not sufficient to hold that there was a partition brushing aside the other evidence which is considered by the appeal court in paragraphs 8 to 10 of the judgment. No substantial question of law is involved in this appeal. Considering the findings of facts recorded by the appeal court and as I find sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court in second appeal to interfere with the findings of fact, this appeal deserves to be dismissed. It is dismissed as such. As a consequence thereof, the civil application also stands disposed of.

(D.B.BHOSALE,J.)